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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

Amendment of Parts 21 and 74 to Enhance)
the Ability of Multipoint Distribution Service)
and Instructional Fixed Television Fixed)
Service Licensees to Engage in Fixed)
Two-Way Transmissions)

RM-9060

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Federal Communications Commission
Office of Secretary

COMMENTS

Northeastern University, by its undersigned attorneys, hereby submits its initial "Comments" on the above-captioned Petition for Rulemaking.¹

Northeastern is the licensee of ITFS Station KYP-23 (Channels B1-4) in Boston, Massachusetts. Northeastern transmits credit and noncredit courses in arts and sciences, business administration and wellness education, engineering and engineering technology as well as complete graduate degree programs in electrical and computer engineering on a live, interactive basis to approximately 2,000 students located at Northeastern's suburban Boston campuses. In addition, at least 3,000 persons employed at corporate receiving locations involved in diverse high technology industries enroll in Northeastern to receive both credit and continuing education ITFS programming. Northeastern has also entered into an excess capacity lease agreement with CAI Wireless Systems, Inc.

¹ See Public Notice, DA 97-637 (released Mar. 31, 1997). The Commission initially set the filing deadline for comments as April 30, 1997. However, in a Public Notice, released Apr. 28, 1997, the Commission extended this deadline until May 14, 1997.

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The Petition proposes a comprehensive restructuring of the Commission's rules governing the Instructional Television Fixed Service ("ITFS") and the Multipoint Distribution Service ("MDS"). The apparent goal of these proposals is to make spectrum available for a multiservice competitor to cable television systems and other telecommunications service providers by enhancing each licensee's ability to use the spectrum for two-way digital transmissions of video, data and voice services.

It is obvious that the commercial wireless cable industry's longstanding, but as yet unfulfilled, desire to bolster its competitive viability supplies the driving force for this Petition.² However, there are potentially significant and substantial educational benefits to ITFS licensees as a result of the proposed rule changes. The capability to provide two-way data transmissions would enhance the services and educational opportunities available to Northeastern's on-campus and corporate receiving locations.

Nevertheless, revising the transmission format of an entire industry implicates a variety of complex legal, engineering and policy issues. Of particular concern for Northeastern is the ability of ITFS licensees to maintain independent control of their stations whether or not they participate in "cellularization." There are several aspects of the proposed rules which could impact such control.

² See Petition, at 6 ("Over the past year, it has become clear that merely providing consumers with more of the same video programming through digitization may not be enough for wireless cable to succeed in the video marketplace"), 14 (adoption of proposed rules will serve the public interest "for it will bolster the competitive viability of wireless cable").

First, the proposed rules are drafted ostensibly to permit any ITFS or MDS station to "cellularize" its frequencies. However, before adopting these rules, the Commission should evaluate what would happen if only partial "cellularization" occurred in any one market. On the one hand, any one ITFS licensee should be allowed to maintain an independent "broadcast" station. On the other hand, any one ITFS licensee should be able to cellularize its station.

Obviously, the issue in both these scenarios is whether the ability of an ITFS licensee to use its authorized frequencies is dependent upon the transmission system planned by the wireless cable operator in the market. If an ITFS licensee must operate in conjunction with the other licensees to obtain the benefits of cellularization, then the proposed rules essentially impose a de facto consortium arrangement on ITFS licensees and wireless cable operators that desire to "cellularize" their frequencies within a certain market.

Northeastern believes that the proposed rules must be premised on the understanding that cellularization of ITFS frequencies is permissive, not mandatory, leaving the choice with the existing ITFS licensee of whether to switch from the broadcast to cellular model.³ Such a policy would be consistent with the Commission's existing policy of attempting not to restrict unduly the autonomy and businesses of individual licensees. Accordingly, the Petitioners should be required to demonstrate that the autonomy of ITFS licensees would be preserved,

³ See ITFS Channel Loading Order, 75 RR 2d 755, 758 (1994) (the ability to channel load is permissive, "not one ordered by the Commission, and one in which the ITFS licensee would engage, in its sole discretion").

and that the ITFS spectrum could accommodate both cellular and broadcast transmissions in the same geographic area without harmful interference to either.⁴

Second, the independence of ITFS licensees is brought into question by the Petition's proposal to permit transmissions of more or less than 6 MHz on contiguous channels, which may be licensed to different entities.⁵ The ITFS and MDS spectrum in the 2.5 GHz band is licensed in alternating 6 MHz channels, and each licensee in a geographic area is generally limited to four channels. In order to accomplish what the Petition proposes, ITFS and MDS licensees would have to offer up their spectrum to an integrated system in which single transmission paths may utilize spectrum licensed to multiple entities. Thus, there is a real question whether ITFS would retain its independence and whether the ITFS frequencies would be used for instructional rather than commercial service. If the Commission proposes to permit such transmissions, it should propose rules which ensure that "substantial use" of the frequencies is maintained for instructional purposes.⁶

⁴ See Cable Television Syndicated Program Exclusivity and Carriage of Sports Telecast, 56 RR 2d 625, 632 (1984) (petitioner has burden to justify the worth of rulemaking petition).

⁵ See Petition, at 30.

⁶ See, e.g., Instructional Television Fixed Service, 101 FCC 2d 49, 85 (1985), recon. denied, 59 RR 2d 1355 (1986), vacated in part sub nom. Telecommunications Research & Action Center v. FCC, 836 F.2d 1349 (D.C. Cir. 1988).

This proposal also raises the issue of who the Commission would look to for accountability to the public and other stations for such transmissions?⁷

Accountability is one of the essential parameters of "licenseeship." This proposal should be evaluated further before the Commission proposes rules which permit licensees to combine their frequencies.

Third, another aspect of the proposal may vest too much control in a wireless cable operator over access to ITFS frequencies. Professing a desire to reduce the burden on FCC Staff of processing the flood of applications necessary to authorize cellularization, the Petition suggests eliminating the Commission's independent technical review of applications and interference issues in the absence of a petition to deny specific applications.⁸ The Petition suggests that the Commission should employ a process whereby licensees within a market and in adjacent markets would negotiate interference agreements and enter into private arrangements governing the design of the wireless cable system.⁹

⁷ Compare proposed rule Section 74.982 (eliminating requirement to transmit call sign because of infeasibility of call sign identification in cellular environment) with Request for Declaratory Ruling on Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations, DA 95-1854, ¶¶ 48-51 (released July 10, 1996) (discussing need for call sign to identify transmitter and declining to eliminate call sign requirement during ITFS operations).

⁸ See Petition, at 34-36.

⁹ See Petition, at 36 ("the only time the staff will be required to review the complex interference studies would be in those situations where the applicant could not secure consent to its proposal, and a petition to deny is filed").

While the Commission does permit private coordination efforts among licensees,¹⁰ the proposal in the Petition regarding multilateral agreements for spectrum usage among licensees and non-licensees without review may place too much control over access to information in the hands of wireless cable operators. Potential applicants should have ready access to technical information regarding the operation of existing stations. A database of actual operating parameters must be maintained for third parties to determine how new applications might affect existing stations.

Presumably, the Commission would be responsible for maintaining license records for ITFS and MDS stations which have been cellularized. But, in the environment the Petition proposes, where a "licensee may also, jointly with affected adjacent channel licensees transmit, utilizing bandwidth in excess of its authorized frequencies,"¹¹ and there is no independent Commission review of applications, it may become very difficult for adequate records to be maintained. The Commission must ensure that there is no lack of access to such information which might hinder the ability of ITFS eligibles and licensees to file applications.

Fourth, the proposed rules contemplate transforming ITFS spectrum from the current "broadcast" model, where each licensee serves a relatively large geographic market with a single transmitter, to a cellular system of two-way

¹⁰ See, e.g., 47 C.F.R. § 24.237(a-b) (requiring broadband PCS licensees to coordinate privately with potentially-affected stations).

¹¹ See proposed rule Section 21.905(b).

digital transmissions, where each licensee uses multiple transmitting stations, booster stations and response station transmitters. In comparison to the broadcast transmission equipment needed for operation of an ITFS station, the costs associated with such restructuring could be substantial. To finance this transformation and the operation of the new digitized, cellular system, the Petition envisions agreements between ITFS licensees and wireless cable operators. In such a joint venture, there is an obvious question of how the costs of equipment may affect the ability of an ITFS station to maintain its independence from the wireless cable operations.

In particular, the Commission should consider whether, if the commercial enterprise is unsuccessful, an ITFS licensee, or group of licensees, would be able to continue operating in a cellular mode. As educational entities, ITFS licensees cannot afford to be saddled with debts of a wireless cable operator incurred in constructing a new cellular-based system, nor is there any assurance that they could operate a subscriber-based service to help defray the costs.¹² As the Commission is well aware, the wireless cable industry has struggled to achieve any viable commercial presence despite the Commission's best efforts to promote the industry as a competitive alternative to cable television. The Commission should consider safeguards to ensure that the changes in equipment brought on by cellularization do not adversely affect the independent use of ITFS spectrum.

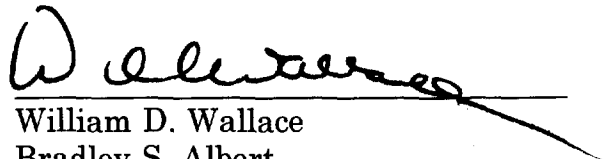
¹² Channel Loading Order, 75 RR 2d at 760-61 (recognizing that ITFS licensees need financial assistance to operate their facilities).

In summary, Northeastern believes that the proposed rules should be considered with the goal of maintaining the ability of traditional ITFS stations to serve their clientele while increasing the educational potential of "distance learning." However, in balancing the interests of MDS and ITFS stations, the Commission must ensure that ITFS is not absorbed into wireless cable to the detriment of the public interest. Accordingly, in evaluating the proposals in the Petition, the Commission must consider guidelines to ensure that the independence of ITFS is maintained.

Respectfully submitted,

NORTHEASTERN UNIVERSITY

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Date: May 14, 1997

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 14th day of May, 1997, caused to be served true and correct copies of the foregoing "Comments" upon the following parties via hand delivery (indicated by an *) or first-class United States mail, postage prepaid:

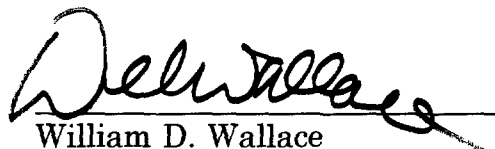
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